

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 596 of 2002

Rajaram Pandurang Sadakale ..Appellant

V/s

Smt.Nakusabaia wd/o

Dhudappa Deokule and Ors. ..Respondents

Shri S.S.Patwardhan for Appellant

Shri S.R.Page for Respondent no.1 to 6

CORAM:S.R.SATHE, J.

DATED:6th March 2006

P.C.:-

. Heard both the learned Advocates.

. Perused the judgments of the Courts below. It is the case of the plaintiffs that the plaintiff nos.1 to 6 and defendant no.2 are the owners of the property. The defendant no.2 executed an alleged sale deed in respect of the suit land in favour of the defendant no.1 which according to the plaintiffs defendant no.2 had no right to execute the same. It is their case that when they were in joint possession of the suit land the defendant nos 1 to 2 obstructed their

possession hence they filed the present suit for permanent injunction and alternatively claimed possession.

. The trial Court after considering the evidence adduced by both the parties came to the conclusion that though the alleged sale deed has been executed by the defendant no.2 in favour of the defendant no.1 he had in fact no right to execute such sale deed. Moreover, trial Court has held that defendant no.1 was not in actual physical possession of the suit land as contended by the defendant no.1. It is also observed that stand taken by the defendant no.1 as regard to the possession was also not consistent. At once stage he claimed possession over the entire suit land while at other place he claimed possession of only half of the land. The trial Court positively held that on the date of the filing of the suit the plaintiffs were having joint possession of the suit land while defendant no.1 was not in possession. So far as the defendant no.2 is concerned all along he remained exparte. the trial Court therefore decreed the suit for permanent injunction against the defendants and restrained them from causing obstruction in plaintiffs' joint enjoyment of the suit land to the extent of 6/7th share by them or through their agent etc.

. The first Appellate Court has confirmed the said

finding with regard to the possession. There is no error of law. Both the courts below have held that defendant no. 1 is not in actual possession as contended by him. Hence, no substantial question of law is involved in this appeal.

. The appeal is dismissed in limine.

(S.R.SATHE, J.)